## COMMENT.

A general act was passed in Massachusetts last year, whereby towns of 12,000 inhabitants or more might become cities without application to the legislature. Since the passage of this act, two towns have become cities, but, for some reason or other, they preferred to obtain special charters. The town of Medford, by vote of a majority of its inhabitants, determined to take advantage of the law and become a city. The minority, contesting the legality of the act, obtained a decision from the Supreme Court of Massachusetts that it was unconstitutional. In some aspects, the act promised to be very useful; the trouble and time of obtaining charters, both to the towns and to the legislature, was to be saved. The nature of the charter was to be determined by vote of the inhabitants, within certain limitations. Alternatives concerning some of the particulars of the municipal government were provided for the choice of the people. The court, emphasizing the advantages of the system of town government in vogue in the State, held that it is the duty of the legislature, under the Constitution of 1820, to decide not only "whether a city government should be established, but, if established, what the provisions of the city charter should be."

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The question of filling up blanks in sealed instruments after their execution, on parol authority, on which there is some diversity of opinion among our courts, is the subject of a recent Western decision, *Jennings* v. *Jennings*, 34 Pac. Rep. 21 (Ore.). A grantee of land, intending to reconvey it to his grantor, executed a deed, leaving blank the name of the grantee. The grantee (original grantor) filled in the blank with the name of his daughter, and delivered it to her. This was held sufficient to pass title to her. A somewhat similar case is that of *Palacios* v. *Brasher*, 34 Pac. Rep. 251 (Col.). Two sureties signed a bond, which had been drawn up by the attorney of their principal, leaving blank the description of the property given as security. There was no seal on the bond. The attorney signed the jurat below as notary, and subsequently filled in the blank. The case was decided in the lower court, and argued by both sides before the appellate court, on the question of sufficiency of parol authority to fill up blanks in a sealed instrument. The Supreme Court, observing that the bond was not a sealed instrument, did not decide the

question, but held in substance that, under the circumstances, the sureties were estopped from denying the attorney's authority.

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A case which is important as it reverses the decisions given in many ancient and modern English cases under exactly similar circumstances, and repudiates the rule as given in the text in Bispham on Equity, Pomeroy on Equity, and many other writers on that subject, is that of *Skinner* v. *Tirrell*, 34 N. E. Rep. 692 (Mass.). This was a bill in equity in which the plaintiff prayed that the defendant might be ordered to pay to her money advanced to the defendant's wife, while living apart from her husband, which she expended, it is alleged, in the purchase of necessaries. The court said: "It is said that equity has jurisdiction because there is no remedy at law. It is admitted that there is none. Neither is there any right or claim at law on the part of the plaintiff against the defendant. To sustain the bill on that ground would require us to hold that equity may create a legal right where none exists and then enforce it by equitable remedies. We do not understand that it can do so. At law it is entirely clear that a married woman has no right under such circumstances to borrow money on her husband's credit, even for the purchase of necessaries. We see no reason why the power should be withheld at law and given in equity." There is no good ground on which recovery can be had in equity for moneys so advanced to the wife.

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A decision of a case which has been watched with great interest was handed down by the Supreme Court of Massachusetts on November 4th. An act of the legislature of that State declared that mileage books bought of one railroad company might be used in traveling on any railroad in the State. A divided court, denying the constitutionality of the act, said: "If the legislature cannot constitutionally require a railroad company to transport a passenger unless the fare is paid in advance, we have no doubt that the delivery of a mileage ticket issued by another corporation is not in itself a payment of the fare. The most formidable objections to the statute are that it authorizes one railroad to determine the conditions on which another railroad must carry passengers on the credit of another. Although, by reason of the public nature of the employment, the legislature can establish the rates of fare to be demanded by common carriers of passengers, we do not see that they can be compelled ultimately to take in payment anything which any other person could not be compelled to

take in payment of a service rendered or in discharge of a debt. The statute puts no limit upon the number of mileage tickets which any railroad may issue or upon the time within which they must be used. It is possible that a railroad in need of money might resort to enormous sales of such tickets as a mode of raising money, and that these tickets might remain outstanding to be used on other roads indefinitely, and that many of them might be presented for redemption at some remote time in the future when the railroad company issuing them might not be able to redeem them. The security for the ultimate payment of the fare in money ought, we think, to be as certain as that required when private property is taken for public uses. That the necessary effect of the statute is to apply and appropriate individual property to the public use without the owner's consent and without legal provision for a reasonable compensation therefor: and for this reason the statute is void." The dissenting opinion is also interesting: "I am not aware of anything in either of the State or United States Constitutions which forbids the State, in regulating the public business of transporting passengers within its borders, when the business is carried on by its own creatures, whose financial ability it is supposed to know, from requiring these corporations to issue tickets, which, when paid for, shall be received for transportation on a line of railroad other than that issuing it, and which shall entitle the carrying railroad to receive its pay from the railroad which issued and sold the ticket. I think it is not a taking of property without due process of law, within the meaning of that language in the Constitution of the United States. It is merely a regulation of public business which the legislature has a right to regulate. Its apparent object is to promote the convenience of persons having occasion to travel on different railroads, and to reduce for them the cost of transportation. The risk of pecuniary loss to a corporation from carrying a passenger on the credit of another corporation to which the money has been advanced for carriage, instead of having payment at the time, is almost infinitesimal. It is a matter of common knowledge that every railroad does business on the credit of other railroads to a much larger amount than would ever be done under a statute of this kind; but suppose there is a possibility of trifling loss in a case which might arise under the statute, that does not render the statute unconstitutional."

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The question as to the right of the abutting owner to obtain compensation for the placing of poles and wires in the highway

came up for the first time in Connecticut in the recent case of *Beecher* v. *The New Haven & Morris Cove Railroad Co.*, in the Superior Court for New Haven County. The defendants alleged in their answer that the selectmen of the Town of New Haven had granted to the New Haven & Morris Cove Railroad Co. permission to lay its tracks and erect its poles and wires through Townsend Avenue, as provided by the general street railroad law of 1893. The plaintiff demurred to this answer on the ground that the legislature had no right to give the selectmen this power without providing for compensation to the abutting owners. The court refused to sustain the demurrer. The following is Judge Hall's statement of the law: "The placing in the highway of the fixtures of an electric street railway does not impose an additional servitude upon the plaintiff's property. The poles and wires are a part of the system for the propulsion of the cars, and the placing of them in the highway under the supervision of the local authorities is a legitimate use of the plaintiff's land as a street. For *such use only* of the highway by defendant the plaintiff is not entitled to damages." This is in accordance with the view of all the other States in which this question has been decided, among which are included Massachusetts, Rhode Island, New Jersey, and Michigan. Although we have in Connecticut no authoritative declaration of the Supreme Court, the authority in support of this decision is so strong that the question can be considered as settled.